

CLEAN WATER ACT2-A. Pretreatment**1. AUTHORITY.****a. To perform the following functions of an Approval Authority:¹**

- i. to approve alternate temperature limits, pursuant to 40 C.F.R. § 403.5(b)(5);
- ii. to act upon applications from Publicly Owned Treatment Works for authority to grant removal credits and to perform all related functions, pursuant to 40 C.F.R. §§ 403.7(a)-(d), 403.7(e)(1)-(5), 403.7(f), 403.11(a)-(c), and 403.11(e)-(f);
- iii. to request information relating to slug discharges, pursuant to 40 C.F.R. § 403.8(f)(2)(vi);
- iv. to make determinations on requests for POTW Pretreatment Program approvals and modifications, to initiate POTW Pretreatment Program modifications, and to perform all related functions, including but not limited to providing notifications and soliciting reviews and comments, pursuant to 40 C.F.R. §§ 403.9, 403.11(a)-(c), 403.11(e)-(f), and 403.18;
- v. to designate frequency and deadlines for submission of periodic compliance reports, pursuant to 40 C.F.R. § 403.12(e)(1);
- vi. to require information in annual reports, pursuant to 40 C.F.R. § 403.12(i); and
- vii. to require composite sampling, pursuant to 40 C.F.R. part 403, appendix E.

b. To perform the following functions of a Control Authority:

- i. to designate an Industrial User as a Significant Industrial User, pursuant to 40 C.F.R. § 403.3(v)(1)(ii);
- ii. to determine that an Industrial User subject to categorical Pretreatment Standards is a Non-Significant Industrial User, pursuant to 40 C.F.R. § 403.3(v)(2);
- iii. to determine that an Industrial User is not a Significant Industrial User, pursuant to 40 C.F.R. § 403.3(v)(3);
- iv. to calculate and establish equivalent concentration-based and mass-based limits for categorical Pretreatment Standards, pursuant to 40 C.F.R. § 403.6(c); and
- v. to impose mass-based limitations on Industrial Users using dilution, pursuant to 40 C.F.R. § 403.6(d).

¹ Definitions in 40 C.F.R. § 403.3 apply to this delegation.

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- vi. to derive or modify fixed alternative discharge limits, to concur on an Industrial User's derivation or modification of such limits, and to make any related determinations related to combined waste streams pursuant to 40 C.F.R. § 403.6(e)(1)-(3);
 - vii. to approve changes in monitoring locations, pursuant to 40 C.F.R. § 403.6(e)(4);
 - viii. to perform sampling and analysis and to require, allow, and direct the means of submission of any reports, sampling or analytic results, documentation, or other information, pursuant to 40 C.F.R. § 403.12, including but not limited to:
 - A. for baseline reports, to allow for verifiable estimates of flow, to require sampling and analysis to be mass-based, to require documentation relating to compliance with Pretreatment Standards, and to allow use of only historical data, pursuant to 40 C.F.R. § 403.12(b)(4) and (5);
 - B. for periodic compliance reports, to designate frequency and deadlines for submission, to require more detailed flow reporting, and to require documentation concerning Best Management Practices, pursuant to 40 C.F.R. § 403.12(e)(1);
 - C. for periodic compliance reports, to allow IUs to forego sampling of pollutants, pursuant to 40 C.F.R. § 403.12(e)(2);
 - D. to reduce the frequency of periodic compliance reports, pursuant to 40 C.F.R. § 403.12(e)(3);
 - E. to request information on flow, nature, concentration, production, and mass, and to perform sampling and analysis, pursuant to 40 C.F.R. § 403.12(g)(1) and (2);
 - F. to require IUs to monitor as necessary to assess and assure compliance, including allowing grab or composite sampling and specifying numbers of samples, pursuant to 40 C.F.R. § 403.12(g)(3) and (4); and
 - G. to require IUs not subject to categorical Pretreatment Standards to submit reports and documentation, pursuant to 40 C.F.R. § 403.12(h).
 - ix. to act upon applications to adjust categorical Pretreatment Standards and perform all related functions, pursuant to 40 C.F.R. § 403.15;
 - x. to waive written reports of bypasses, pursuant to 40 C.F.R. § 403.17(c)(2); and
 - xi. to approve anticipated bypasses pursuant to 40 C.F.R. § 403.17(d)(2).
- c. To perform the following functions of the Regional Administrator:
- i. to request daily flow reports and other data related to removal credits, pursuant to 40 C.F.R. § 403.7(h)(1)(iii);

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- ii. to require and make supporting determinations, pursuant to 40 C.F.R. § 403.8, that a POTW with a design flow of five million gallons per day or less develop a POTW Pretreatment Program, pursuant to 40 C.F.R. § 403.8(a);
 - iii. to request information from POTWs (such as identification and locations of Industrial Users, character and volume of pollutants contributed to the POTW, and slug discharge evaluations), to inspect and copy any records of Industrial Users or POTWs, and to request extended periods for record retention pursuant to 40 C.F.R. § 403.8(f)(2)(i) and (ii) and 403.12(o)(2) and (3); and
 - iv. to object to any state approval of any Pretreatment Program Submission or authorization to grant removal allowances, pursuant to 40 C.F.R. § 403.11(d).
- d. To perform the functions of the Water Management Division Director in acting upon requests for categorical determinations, pursuant to 40 C.F.R. § 403.6(a)(1)-(4).

2. TO WHOM DELEGATED.

- a. Authorities 1.a through 1.d. are delegated to the director, Water Division.
- b. In addition to being delegated to the Water Division director, authorities referenced in paragraphs 1.a.iii, 1.a.v, 1.a.vi, 1.a.vii, 1.b.vii, 1.b.viii, 1.b.x, 1.c.i, and 1.c.iii are also delegated to the director, Enforcement and Compliance Assurance Division.

3. LIMITATIONS.

- a. Paragraph 1.a. applies only where there is no EPA-approved state or tribal pretreatment program and, therefore, pursuant to 40 C.F.R. § 403.3(c), the "Approval Authority" is the regional administrator.
- b. Paragraph 1.b. applies only where there is no EPA-approved state or tribal pretreatment program and no POTW Pretreatment Program Submission has been approved, and, therefore, pursuant to 40 C.F.R. § 403.3(f), the "Control Authority" is the regional administrator.
- c. Paragraphs 1.c. and 1.d. apply regardless of whether there is an Approved POTW Pretreatment Program.
- d. Any official exercising an authority referenced in paragraph 2.b. shall notify the other director or designee prior to exercising that authority. Either director may also waive receipt of such notification.

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- e. This delegation does not authorize exercising any authority referenced in paragraph 2.b. in any compliance order issued pursuant to section 309(a) of the CWA. Nor does it limit the authority to issue any such order in accordance with applicable agency delegations and policies.
- f. For purposes of 40 C.F.R. part 403, the position of Water Division director is equivalent to the Water Management Division Director. Therefore, in Region 8, the Water Division director is authorized to perform any functions that 40 C.F.R. part 403 authorizes a Water Management Division Director to perform.

4. REDELEGATION AUTHORITY.


- a. Except as otherwise provided below, these authorities may be redelegated to the unit chief level, and no further.
 - i. Conducting inspections and copying records under authority 1.c.ii. may be redelegated to staff.
 - ii. Authority 1.c.iv. cannot be redelegated.
- b. An official who redelegates an authority retains the right to exercise or withdraw the authority. Redelegated authority may be exercised by any official in the chain of command down to the official to whom it has been specifically redelegated.

5. ADDITIONAL REFERENCES.

- a. Sections 307, 308, and 309 of the Clean Water Act.
- b. Delegation 2-14-A, Civil Judicial Enforcement and Administrative Penalty Collection Actions; Delegation 2-22, Administrative Compliance Orders and Notices of Violation; Delegation 2-51, Class I Administrative Penalty Actions; Delegation 2-52A, Class II Administrative Penalty; Initiation of Action; Public Notice; Consultation with State; Negotiation and Signing Consent Agreements; and Assessing Penalties. Delegation 2-52-B, Class II Administrative Penalty; Agency Representation in the Hearings; Initiating Internal Appeals of Adverse Determinations; and Representing Agency in Appeals Under Section 309(g) and 311(b) of the CWA.

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- c. U.S. Environmental Protection Agency Order 3510, "EPA Federal Credentials for Inspections and Enforcement of Federal Environmental Statutes and Other Compliance Responsibilities," which addresses inspector credentials issued to employees of EPA who are authorized by EPA to conduct inspections or investigations and take samples on EPA's behalf under the various federal environmental statutes.



Gregory Sopkin
Regional Administrator

Date